

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NELSON R. HERRERA, an individual;
NENEBETH T. HERRERA, an individual,

Plaintiffs,

v.

COUNTRYWIDE KB HOME LOANS, A
COUNTRYWIDE MORTGAGE VENTURES
LLC, a Delaware Limited Liability Corporation;
BAC HOME LOAN SERVICING, LP, a
Business Entity, form unknown; CITIBANK,
N.A.; RECONTRUST COMPANY, a Business
Entity, form unknown; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., a Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 5:11-CV-03591-LHK

ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED FOR
FAILURE TO PROSECUTE

Plaintiffs Nelson R. Herrera and Nenebeth T. Herrera (collectively “Plaintiffs”) filed their complaint in state court on June 2, 2011, which Defendants then removed to federal court on July 21, 2011. *See* ECF No. 1. On July 27, 2011, Defendants Bank of America, N.A., successor-by-merger to Countrywide Mortgage Ventures, LLC (erroneously sued as “Countrywide KB Home Loans, a Countrywide Mortgage Ventures, LLC”) (“Countrywide”), and successor-by-merger to BAC Home Loans Servicing, LP (erroneously sued as “BAC Home Loan Servicing, LP”) (“BAC”); ReconTrust Company, N.A. (“ReconTrust”); and Mortgage Electronic Registration

Systems, Inc. ("MERS") (collectively "Moving Defendants") filed a Motion to Dismiss all twenty-nine claims pursuant to Federal Rule of Civil Procedure 12(b)(6) as barred by the doctrine of *res judicata* and for failure to state a claim upon which relief can be granted, *see* ECF No. 6, which Moving Defendants re-noticed on October 7, 2011, after this case was reassigned to the undersigned, *see* ECF No. 18. Defendant Citibank, N.A. ("Citibank") filed a Notice of Joinder in Moving Defendants' Motion to Dismiss. Pursuant to Civil Local Rule 7-3(a), Plaintiffs' opposition to the motion to dismiss was due on October 21, 2011. As of today, December 9, 2011, Plaintiffs have not filed an opposition or statement of nonopposition to Defendants' motion to dismiss. The Court hereby VACATES the December 15, 2011 hearing on Defendants' Motion to Dismiss and initial case management conference.

Furthermore, the Court ORDERS Plaintiffs to show cause why this case should not be dismissed for failure to prosecute. This Order does not authorize Plaintiff to file an untimely opposition to Defendants' motion to dismiss. Plaintiffs have until January 3, 2012 to file a response to this Order to Show Cause. A hearing on this Order to Show Cause is set for **Wednesday, January 11, 2012 at 2:00 P.M.** Plaintiffs' failure to respond to this Order and to appear at the January 11, 2012 hearing will result in dismissal with prejudice for failure to prosecute.

In the event that Plaintiffs timely file a response to this Order, Defendant Citibank is on notice that the Court may at that time request supplemental briefing as to why Citibank's joinder in Moving Defendants' Motion to Dismiss is proper given that Citibank was not a party to the relevant prior action, contrary to Moving Defendants' representation in footnote 1 of their Motion.

IT IS SO ORDERED.

Dated: December 9, 2011


LUCY H. KOH
United States District Judge